

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAYNA PADULA, et al.,
Plaintiffs,
v.

No. 2:05-cv-00411-MCE-EFB

MEMORANDUM AND ORDER

ROBERT MORRIS, et al.,
Defendants.

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Presently before the Court is Defendants' Motion for
Judgment on the Pleadings, Summary Judgment and Summary
Adjudication.¹

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¹ Because oral argument will not be of material assistance,
the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).

BACKGROUND

Plaintiffs' First Amended Complaint asserts causes of action for sexual harassment and sexual discrimination under both federal and state law against various school administrators, school board members, and the Dunsmuir Joint Union High School District. Among other things, the First Amended Complaint alleges that Robert Morris, the principal of Dunsmuir High School and later superintendent of the Dunsmuir Joint Union High School District sexually harassed female students and that the school board, when notified of the sexual harassment, failed to act. Defendants now seek judgment on the pleadings or summary adjudication as to some of Plaintiffs' causes of action.

STANDARD

1. Summary Adjudication

The Federal Rules of Civil Procedure provide for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

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1 Rule 56 also allows a court to grant summary adjudication on
2 part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party
3 seeking to recover upon a claim ... may ... move ... for a
4 summary judgment in the party's favor upon all or any part
5 thereof."); see also *Allstate Ins. Co. v. Madan*, 889 F. Supp.
6 374, 378-79 (C.D. Cal. 1995); *France Stone Co., Inc. v. Charter*
7 *Twp. of Monroe*, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

8 The standard that applies to a motion for summary
9 adjudication is the same as that which applies to a motion for
10 summary judgment. See Fed. R. Civ. P. 56(a), 56(c); *Mora v.*
11 *ChemTronics*, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998).

12 Under summary judgment practice, the moving party
13 always bears the initial responsibility of informing
14 the district court of the basis for its motion, and
15 identifying those portions of 'the pleadings,
16 depositions, answers to interrogatories, and admissions
17 on file together with the affidavits, if any,' which it
18 believes demonstrate the absence of a genuine issue of
19 material fact.

20 *Celotex Corp. v. Catrett*, 477 U.S. at 323 (quoting Rule 56(c)).

21 If the moving party meets its initial responsibility, the
22 burden then shifts to the opposing party to establish that a
23 genuine issue as to any material fact actually does exist.
24 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
25 585-87 (1986); *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S.
26 253, 288-89 (1968).

27 In attempting to establish the existence of this factual
28 dispute, the opposing party must tender evidence of specific
29 facts in the form of affidavits, and/or admissible discovery
30 material, in support of its contention that the dispute exists.
31 Fed. R. Civ. P. 56(e).

1 The opposing party must demonstrate that the fact in contention
2 is material, i.e., a fact that might affect the outcome of the
3 suit under the governing law, and that the dispute is genuine,
4 i.e., the evidence is such that a reasonable jury could return a
5 verdict for the nonmoving party. *Anderson v. Liberty Lobby,*
6 *Inc.*, 477 U.S. 242, 248, 251-52 (1986); *Owens v. Local No. 169,*
7 *Assoc. of W. Pulp and Paper Workers*, 971 F.2d 347, 355 (9th Cir.
8 1987). Stated another way, "before the evidence is left to the
9 jury, there is a preliminary question for the judge, not whether
10 there is literally no evidence, but whether there is any upon
11 which a jury could properly proceed to find a verdict for the
12 party producing it, upon whom the onus of proof is imposed."
13 *Anderson*, 477 U.S. at 251 (quoting *Improvement Co. v. Munson*,
14 14 Wall. 442, 448, 20 L.Ed. 867 (1872)). As the Supreme Court
15 explained, "[w]hen the moving party has carried its burden under
16 Rule 56(c), its opponent must do more than simply show that there
17 is some metaphysical doubt as to the material facts Where
18 the record taken as a whole could not lead a rational trier of
19 fact to find for the nonmoving party, there is no 'genuine issue
20 for trial.'" *Matsushita*, 475 U.S. at 586-87.

21 In resolving a summary judgment motion, the evidence of the
22 opposing party is to be believed, and all reasonable inferences
23 that may be drawn from the facts placed before the court must be
24 drawn in favor of the opposing party. *Anderson*, 477 U.S. at 255.
25 Nevertheless, inferences are not drawn out of the air, and it is
26 the opposing party's obligation to produce a factual predicate
27 from which the inference may be drawn.

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1 *Richards v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45
2 (E.D. Cal. 1985), *aff'd*, 810 F.2d 898 (9th Cir. 1987).

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4 **2. Judgment on the Pleadings**

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6 A Rule 12(c) motion for judgment on the pleadings challenges
7 the legal sufficiency of the opposing party's pleadings. *E.g.*
8 *Westlands Water Dist. v. Bureau of Reclamation*, 805 F. Supp.
9 1503, 1506 (E.D. Cal. 1992). Any party may move for judgment on
10 the pleadings after the pleadings are closed but within such time
11 as to not delay trial. Fed. R. Civ. P. 12(c).

12 The standard for evaluating a motion for judgment on the
13 pleadings is essentially the same as the standard applied to a
14 Rule 12(b)(6) motion. *Dworkin v. Hustler Magazine, Inc.*,
15 867 F.2d 1188, 1192 (9th Cir. 1989). A motion for judgment on
16 the pleadings should be granted only if, accepting as true all
17 material allegations contained in the nonmoving party's
18 pleadings, the moving party "clearly establishes that no
19 material issue of fact remains to be resolved and that he [or
20 she] is entitled to judgment as a matter of law.'" *Doleman v.*
21 *Meiji Mut. Life Ins. Co.*, 727 F.2d 1480, 1482 (9th Cir. 1984)
22 (quoting Charles Alan Wright & Arthur R. Miller, *Federal Practice*
23 *and Procedure* § 1368 (1969)); *Hal Roach Studios, Inc. v. Richard*
24 *Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989).
25 Judgment on the pleadings is also proper when there is either a
26 "lack of cognizable legal theory" or the "absence of sufficient
27 facts alleged under a cognizable legal theory." *Balistreri v.*
28 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

Courts have discretion to grant leave to amend in conjunction with motions made pursuant to Rule 12(c). *Moran v. Peralta Cmty. Coll. Dist.*, 825 F. Supp. 891, 893 (N.D. Cal. 1993) (citing *Amersbach v. City of Cleveland*, 598 F.2d 1033, 1038 (6th Cir. 1979)). Generally, leave to amend a complaint is denied only if it is clear that the deficiencies of the complaint cannot be cured by amendment and that amendment would therefore be futile. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

ANALYSIS

1. Jessica Hall

Because Jessica Hall was dismissed from the action with prejudice pursuant to this Court's August 4, 2008 Order, the Motion for Summary Judgment as to Jessica Hall's First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Causes of Action is moot.

2. Pamela Hall

Because Pamela Hall was dismissed from the action with prejudice pursuant to this Court's June 27, 2008 Order, the Motion for Summary Judgment as to Pamela Hall's Third and Fourth Causes of Action is moot.

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3. Dayna Padula's First Cause of Action

Defendants seek summary adjudication of Plaintiff Dayna Padula's First Cause of Action for violation of Title IX, 20 U.S.C. § 1681. In her deposition, Dayna Padula testified that Robert Morris, the high school principal, gave her a hug after a Christmas concert, rubbed her shoulders and asked her what was the matter in the school hallway, and, during a disciplinary meeting, told Dayna, "I don't know whether to hug you or spank you" and then hugged her and swatted her on the buttocks as she walked out the door. Defendants argue this behavior was not offensive as required to prevail on a Title IX claim. Defendant cites Brooks v. City of San Mateo, 229 F.3d 917 (9th Cir. 2000), for the proposition that where there are fewer incidents of sexual harassment, they must be of greater severity. Defendants also cite Reese v. Jefferson School Dist. #14 J, 208 F.3d 736 (9th Cir. 2000), for the proposition that harassment must be severe, pervasive, and objectively offensive so as to deprive the victim of an educational opportunity. This Court declines to follow Defendants' arguments. Brooks dealt with a workplace sexual harassment claim under Title VII. While Title VII claims are instructive in dealing with sexual harassment claims in the school setting, what may not be offensive enough to be actionable between adults could be actionable between an adult and a child. Further, Reese deals with sexual harassment between one student and another. Reese acknowledges that what may not be offensive between children could be offensive between an adult and a child. 208 F.3d at 739.

1 This Court cannot say that the hugging, shoulder-rubbing, threats
2 to spank, and actual swatting on the buttocks done by an adult
3 principal to a female high school student is not objectively
4 offensive. Defendants have failed to meet their burden on this
5 issue and summary adjudication in favor of Defendants is denied.

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7 **4. Second and Third Causes of Action**
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9 Defendants seek judgment or judgment on the pleadings as to
10 the Second Cause of Action for denial of Title IX rights under
11 42 U.S.C. § 1983 and the Third Cause of Action for denial of
12 equal protection and substantive due process under 42 U.S.C.
13 § 1983. Defendants argue that these claims are essentially the
14 same as the First Cause of Action for sexual harassment and
15 discrimination under 20 U.S.C. § 1681 and are preempted by the
16 Title IX claims.

17 Although the preemption issue has not been decided by the
18 Ninth Circuit, there is a split among the other circuits
19 regarding Title IX's preemptive effect on Title VII claims. See
20 Mansourian v. Board of Regents of Univ. of California at Davis,
21 2007 WL 3046034 (E.D. Cal. 2007) at *14-17 (explaining circuit
22 split). As discussed in Mansourian, the complex administrative
23 and judicial enforcement scheme in Title IX reflects Congress'
24 intent to subsume § 1983 claims within Title IX. Id. For the
25 reasoning set forth in Mansourian, this Court finds that the
26 Second and Third Causes of Action are preempted by Title IX.
27 Accordingly, judgment on the pleadings is granted in favor of
28 Defendants as to these two claims.

1 **5. Pamela Padula's and Timothy Padula's Third Cause of**
2 **Action**

3 Defendants seek judgment on the pleadings as to Dayna
4 Padula's, Pamela Padula's, and Timothy Padula's Third Cause of
5 Action for denial of equal protection and substantive due process
6 under 42 U.S.C. § 1983. Plaintiffs' opposition is silent on this
7 issue. Accordingly, summary adjudication is granted in favor of
8 Defendants as to Plaintiffs Pamela and Timothy Padula's Third
9 Cause of Action.

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11 **6. Fourth Cause of Action**

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13 Defendants seek summary judgment on Dayna Padula's, Pamela
14 Padula's, and Timothy Padula's Fourth Cause of Action² for
15 conspiracy under 42 U.S.C. §§ 1985(3) and 1986. Defendants argue
16 that these Plaintiffs have not substantiated the elements of this
17 cause of action. Section 1985(3) provides, in pertinent part

18 If two or more persons ... conspire ... for the
19 purpose of depriving, either directly or
20 indirectly, any person or class of persons of the
21 equal protection of the laws, or of equal
22 privileges and immunities under the laws ... the
23 party so ... deprived may have an action for the
24 recovery of damages occasioned by such ...
25 deprivation, against any one or more of the
26 conspirators.

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27 ² Defendants also seek summary adjudication of Christina
28 Pistorius' Fourth Cause of Action. Summary adjudication was
rendered on this claim as to Ms. Pistorius in this Court's May 1,
2008 Order.

1 The elements of a conspiracy under § 1985(3) include "(1) a
2 conspiracy; (2) for the purpose of depriving, either directly or
3 indirectly, any person or class of persons of the equal
4 protection of the laws, or of equal privileges and immunities
5 under the laws; and (3) an act in furtherance of this conspiracy;
6 (4) whereby a person is either injured in his person or property
7 or deprived of any right or privilege of a citizen of the United
8 States." Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th
9 Cir. 1992) (quoting United Brotherhood of Carpenters and Joiners
10 of America v. Scott, 463 U.S. 825, 828-29(1983)). To prove a
11 violation of § 1985(3), a plaintiff must show "some ...
12 class-based, invidiously discriminatory animus behind the
13 conspirators' action. The conspiracy, in other words, must aim at
14 a deprivation of the equal enjoyment of rights secured by the law
15 to all.'" Orin v. Barclay 272 F.3d 1207, 1217 (9th Cir. 2001)
16 (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)). The
17 only evidence Plaintiffs can put forward on this issue is Timothy
18 Padula's belief that certain defendants had entered into a
19 conspiracy to cover up problems at the high school. Further, it
20 is unlikely that Plaintiffs can show they belong to a protected
21 class. Plaintiffs argue that they have the right to be free of
22 discrimination based on gender, but the inclusion of Mr. Timothy
23 Padula tends to defeat that argument. In light of the lack of
24 evidence as to the elements of a conspiracy, Defendants' motion
25 for summary adjudication as to Plaintiffs' Fourth Cause of Action
26 for conspiracy is granted in favor of Defendants.

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7. Seventh Cause of Action

Defendants seek judgment on the pleadings as to Pamela Padula's and Timothy Padula's Seventh Cause of Action under California's Unruh Act because neither Pamela nor Timothy claim to be a direct victim of the alleged conduct. The Seventh Cause of Action alleges that Plaintiffs Pamela and Timothy Padula were denied equal protection of the law because their children were denied an education free from unlawful discrimination and harassment based on gender. Defendants assert that summary judgment is appropriate because California law requires that a Plaintiff under the Unruh Act have actually been a victim of discrimination. Plaintiffs' opposition is silent on this issue. Accordingly, summary adjudication is granted in favor of Defendants as to Plaintiffs Pamela and Timothy Padula's Seventh Cause of Action.

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CONCLUSION

Defendants' Motion for Summary Judgment and/or Summary Adjudication is DENIED as to Dayna Padula's First Cause of Action, and GRANTED as to the Second, Third, and Fourth Causes of Action. Defendants' Motion is also GRANTED as to Plaintiffs Pamela and Timothy Padula's Third, Fourth and Seventh Causes of Action.

IT IS SO ORDERED.

Dated: September 23, 2008

A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE